

PHILLIP A. TALBERT
United States Attorney
LAUREL J. MONTOYA
Assistant United States Attorney
Robert E. Coyle Federal Courthouse
2500 Tulare Street
Fresno, CA 93721

(559) 497-4000

Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT ANTHONY MENDOZA, JR.,

Defendant.

CASE NO. 1:22-CR-00193-ADA-BAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
AND ORDER

DATE: September 28, 2022

TIME: 2 p.m.

COURT: Hon. Barbara A. McAuliffe

General Order 618 was entered on May 13, 2020 to address public health concerns related to COVID-19. Further, pursuant to General Order 614, 620, 624, 628, and 630 and the CARES Act, this Court's declaration of judicial emergency under 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council's Order of April 16, 2020 continuing this Court's judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after May 1, 2020.¹

Although the General Order addresses the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*

¹ A judge "may order case-by-case exceptions" at the discretion of that judge "or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations." General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 2 judge ordering and ends-of-justice continuance must set forth explicit findings on the record “either
 3 orally or in writing”).

4 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 5 and inexcusable—General Orders 611, 612, 617, 618, and 620 and the subsequent declaration of judicial
 6 emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the
 7 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
 8 action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. §
 9 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the
 10 case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
 11 such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

12 The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.”
 13 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
 14 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
 15 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
 16 week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d
 17 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
 18 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
 19 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).
 20 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
 21 by the statutory rules.

22 In light of the societal context created by the foregoing, this Court should consider the following
 23 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 24 justice exception, § 3161(h)(7) (Local Code T4).² If continued, this Court should designate a new date
 25 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any

26
 27 ² The parties note that General Order 612 acknowledges that a district judge may make
 28 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
 Cal. March 18, 2020).

pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on September 28, 2022 at 2 p.m. on the duty calendar.

2. By this stipulation, the parties now move to continue the conference in both matters until December 14, 2022, and to exclude time between September 28, 2022, and December 14, 2022, under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

a) The discovery as to these matters has been provided to the defense.

b) The government is aware of additional discovery that is in the process of being prepared that needs to be obtained and processed so it can be provided to defense counsel.

c) Counsel for defendant needs additional time to review discovery in both matters as well as conduct any investigation warranted. Counsel for defendant needs time to discuss the potential resolution of the matter with the government. Counsel for defendant believes that failure to grant the above-requested continuance would deny him/her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) In addition to the public health concerns cited by General Order 611 and presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in this case because Counsel or other relevant individuals have been encouraged to telework and minimize personal contact to the greatest extent possible. It will be difficult to avoid personal contact should the hearing proceed.

e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of September 28, 2022 to December

1 14, 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local
2 Code T4] because it results from a continuance granted by the Court at defendant's request on
3 the basis of the Court's finding that the ends of justice served by taking such action outweigh the
4 best interest of the public and the defendant in a speedy trial.

5 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
6 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
7 must commence.

8 IT IS SO STIPULATED.

9
10 Dated: September 21, 2022

PHILLIP A. TALBERT
United States Attorney

11
12 /s/ LAUREL J. MONTOYA
LAUREL J. MONTOYA
Assistant United States Attorney

13
14
15 Dated: September 21, 2022

/s/ RICHARD BESHWATE, JR.
RICHARD BESHWATE, JR.
Counsel for Defendant
ROBERT ANTHONY
MENDOZA, JR.,

16
17
18 **ORDER**

19 IT IS SO ORDERED that the status conference is continued from September 28, 2022, to
20 **December 14, 2022, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe.** Time is excluded
21 pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).
22

23 IT IS SO ORDERED.

24
25 Dated: September 22, 2022

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE